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Ronald Keith Williams vs State of Florida

NEXT CASE ON THE COURT'S CALENDAR IS RONALD KEITH WILLIAMS VERSUS THE STATE OF FLORIDA. MR. ANDERSON.

MAY IT PLEASE THE COURT. MY NAME IS JEFFREY ANDERSON, AND I REPRESENT THE APPELLANT, RONNIE WILLIAMS. HE IS APPEALING HIS CONVICTION FOR FIRST-DEGREE MURDER AND THE RESULTING DEATH SENTENCE.

WOULD YOU MIND PULLING THE MIKE UP JUST A LITTLE BIT, SIR. THANK YOU VERY MUCH.

THANK. THE ISSUES I WOULD LIKE TO ADDRESS HAPPENED PRETTY INFREQUENTLY IN FLORIDA, AND I WOULD LIKE TO DEAL WITH THE FIRST ONE IN THE BRIEFS. THAT HAS TO DEAL WITH THE SUBSTITUTION OF AN ALTERNATE JUROR AFTER THE JURY HAS STARTED DELIBERATIONS. IN THIS CASE WHAT HAD HAPPENED WAS THE JURY HAD BEEN DELIBERATING FOR BETWEEN FOUR AND-A-HALF OR 5 HOURS, WHEN A JUROR WAS EXCUSED FROM THE JURY PANEL, AND THERE WAS A LONG DISCUSSION BETWEEN THE PROSECUTOR, THE DEFENSE ATTORNEY AND THE TRIAL JUDGE WHAT TO DO AT THIS POINT. INITIALLY EVERYBODY SEEMED TO BE DECIDING THAT A MISTRIAL HAD TO BE DECLARED. BUT THE PROSECUTOR AND THE TRIAL JUDGE CHANGED THEIR OPINIONS ON THAT, AND THEY DECIDED THAT THE ALTERNATE COULD BE CALLED BACK TO CONTINUE WITH DELIBERATIONS ON THE JURY. AND THIS WAS DONE OVER THE DEFENDANT'S MOTION FOR MISTRIAL.

COULD WE GO INTO, DIRECTLY, THE LEGAL PROBLEMS THAT WE ARE GOING TO BE DEALING WITH, IS ANY SUBSTITUTION IS OF CONSTITUTIONAL MAGNITUDE?

I THINK IT IMPACTS THE CONSTITUTIONAL RIGHT TO A JURY OF 12.

DOES THAT MEAN THAT IT ABSOLUTELY, THOUGH, HAS TO BE A PER SE RULE, EVEN IF WE WERE TO HAVE A CIRCUMSTANCE THAT SOMEONE WALKS INTO THE DELIBERATION, THE JURY ROOM, AND RECEIVES A MESSAGE THAT THEY HAVE LOST A FAMILY MEMBER OR SOMETHING, AND IT MUST AUTOMATICALLY, AT THAT POINT, BE TERMINATED AND MISTRIAL ORDERED, EVEN THOUGH WE HAVE ALTERNATE JURORS IN A CAPITOL SITUATION?

WHERE -- IN A CAPITAL SITUATION?

WHERE ALTERNATE JURORS GO IN?

I DON'T KNOW.

CAN I SKIP BEYOND WHETHER THAT IS ERROR OR CONCLUDE THAT IS T IS ERROR. I THINK SOME STATES DO A HARMLESS ERROR TEST AND OTHER STATES WILL AUTOMATICALLY REVERSE, IF THERE IS ANY SUBSTITUTION, AFTER DELIBERATION RS HAVE BEGUN.

WHAT IS THE NATIONRAL? HOW DO THEY DETERMINE WHETHER IT IS HARMLESS OR NOT?

IN THE STATES THAT DO THAT ANALYSIS?

YES.

THEY LOOK AT WHETHER THE INTEGRITY OF JURY DELIBERATIONS HAS BEEN COMPROMISED. THEY LOOK TO SEE IF -- FIRST THEY LOOK AT CERTAIN DANGERS THAT MAY BE CREATED BY SUBSTITUTION AFTER DELIBERATIONS HAVE GUN.

DO THEY INTERVIEW THE WITNESS I MEAN THE JURORS, TO MAKE THIS DETERMINATION?

EXCEPT FOR A LOAN EXCEPTION OF FEDERAL -- FOR ALONE EXCEPTION OF FEDERAL -- EXCEPT FOR A LONE EXCEPTION OF FEDERAL CASES, I HAVE NOT SEEN ANY STATE CASES DO THAT. IT WOULD SEEK THE CONFIDENTIALITY OF JURY DELIBERATIONS, AND THAT IS ONE OF THE ARGUMENTS WHY THIS MAY BE AND PROBABLY SHOULD BE A PER SE REVERSIBLE ERROR, BAUT ALLUDEING TO THE HARM, BECAUSE THE ONLY WAY TO TELL THE HARM OF THE IMPROPER SUBSTITUTION IS TO DELVE INTO THE DELIBERATIONS BY INTERVIEWING THE JURORS.

SO THERE IS NOTHING SHORT OF HAVING GRANTED THE MISTRIAL IN THIS CASE THAT WOULD HAVE BEEN SUFFICIENT, CONSTITUTIONALLY?

YOU MEAN OTHER ALTERNATIVES, OTHER THAN SUBSTITUTION?

YES.

NO. I DON'T SEE ANY -- YOU HAD TO SUBSTITUTE THE ALTO OR DECLARE A MISTRIAL. AND OUR CLAIM IS THAT IT WAS ERROR TO SUBSTITUTE, AFTER DELIBERATIONS HAD BEGUN.

AND YOUR POSITION, REALLY, DOESN'T VARY, AS TO THE REASON JUROR HAD TO LEAVE. I MEAN IF THE JUROR HAD A HEART ATTACK, THE PERSON WAS CARRIED OUT OF THERE ON A STRETCHER.

AS TO THIS PARTICULAR ISSUE, I --

ONCE THEY GO TO TLIB RATIONS, YOUR POSITION IS -- TO DELIBERATIONS, YOUR POSITION IS IF 12 DON'T STAY, THEN THERE HAS GOT TO BE A MISTRIAL.

RIGHT. THAT IS THE POSITION AFTER LOFT STATES.

CAN A DEFENDANT AGREE TO GO WITH LESS THAN 12?

THAT IS WHAT IS DONE IN THE FEDERAL CASES. I DON'T KNOW, BECAUSE THEIR RULES SPECIFICALLY PROVIDE, BY STIPULATION, THEY CAN GO TO ELEVEN. AND FLORIDA, RIGHT NOW, DOESN'T HAVE ANY PROVISION FOR THAT, AND I DON'T KNOW IF THAT CAN BE -- YOU KNOW, A LOT OF THINGS CAN BE DONE BY STIPULATION, AGREEMENT, AND WAIVER OF THE DEFENDANT. I GUESS HE COULD WAIVE HIS RIGHT CONSTITUTIONAL RIGHT OF A JURY OF TWELVE AND WAIVE THE EFFECTS OF THAT RULE. I DON'T KNOW, AS A POLICY MATTER THAT WE WANT THAT WAIVER.

LET ME ASK YOU ABOUT THE ACTUAL RULE, ITSELF. IF THIS WAS A NONCAPITAL CASE, THE RULE SEEMS TO UNEQUIVOCALLY SAY THAT THE ALTERNATE SHALL BE DISCHARGED AT THE TIME OF THE RETIREMENT FOR DELIBERATIONS, SO THERE WOULDN'T, REALLY, BE AN ISSUE, BECAUSE THERE WOULDN'T BE ANY ALTERNATE JURORS AROUND TO CALL BACK.

RIGHT F IT WAS FOLLOWED. YES.

AS TO IT WOULD APPEAR THAT THE PURPOSE FOR THE -- NOT DISCHARGING THE JURORS IN THE CAPITAL CASES IS SO THAT THEY CAN BE THERE IN CASE ALL 12 JURORS DO NOT COME BACK FOR THE PENALTY PHASE. IS THAT YOUR UNDERSTANDING OF THE REASON?

CORRECT. I THINK IT SAYS, THERE, IF THE DEFENDANT SHOULD BE CONVICTED OF FIRST-DEGREE MURDER, THEN THE ALTERNATE MAY COME BACK FOR THE PENALTY-PHASE DUTY, BUT THAT

DOESN'T, REALLY, IMPLY THAT THE RULE INTENDS FOR HIM TO COME BACK AS A SUBSTITUTE IN THE GUILT DELIBERATION.

THE POLICY WOULD BE, OF COURSE, YOU ARE GOING TO HAVE A VERY LONG NONCAPITAL CASE, THAT IF WE WERE TO SAY, WHY SHOULDN'T WE JUST LET JURORS STAY DURING THE DELIBERATIONS, IN CASE SOMEBODY CAN'T SERVE DURING THE DELIBERATIONS, WE WILL HAVE THAT ALTERNATE JUROR THERE. DO YOU KNOW ANYTHING ABOUT THE HISTORY OF THESE RULES THAT CONTEMPLATED A PROCEDURE WHERE ALTERNATE JURORS WOULD BE AVAILABLE FOR DELIBERATIONS OR, AGAIN, GOING BACK TO JUSTICE LEWIS'S INITIAL QUESTION, IS THERE SOMETHING IN FLORIDA ABOUT THE SANCTITY OF DELIBERATIONS THAT, ONCE A JURY STARTS TO DELIBERATE THAT, YOU CAN'T HAVE SUBSTITUTIONS OF ALTERNATE JURORS?

I THINK THE -- WELL, MAGILL IS A CASE THAT SAYS THAT IS ERROR, AND SATOLA CONDEMNS IT, BUT THAT WASN'T PRESERVED PROPERLY. I JUST THINK THE OVERALL HISTORY OF THE SANCTITY OF JURY DELIBERATIONS AND THE FACT THAT YOU DON'T WANT -- YOU DON'T WANT MORE THAN 12 PEOPLE DELIBERATE AGO CASE WHERE ONLY 12 PEOPLE ARE SUPPOSED TO BE VOTING. THE EXAMPLE. THERE IS A LOT OF CASES WHERE THE ALTERNATE GOES IN THE JURY ROOM WITH THE OTHER JURORS THAT ARE PROPERLY THERE, AND IN EVERY CASE, THERE IS A REVERSAL BECAUSE OF THAT.

IF YOU WERE TO SAY, WELL, IF WE DIDN'T HAVE A PER SE RULE, GETTING BACK TO JUSTICE LEWIS'S QUESTION, HOW COULD YOU -- WE DESIGN A PRINCIPLE THAT WOULD BE NARROWLY DRAWN TO TAKE CARE OF THE CIRCUMSTANCE WHERE SOMETHING HAPPENS AT THE VERY BEGINNING OF DELIBERATIONS AND YOU HAVE GOT A THREE-MONTH TRIAL, AND YOU HAVE GOT A JUROR THAT, AS THEY WALKED INTO THE JURY ROOM, LEARNED OF THIS DEATH. HOW WOULD YOU FASHION A RULE THAT WOULD PROTECT, BALANCE ALL THE INTERESTS AND THEN ADDRESS WHETHER, YOU KNOW, HOW THAT -- WHAT OCCURRED IN THIS CASE?

THERE WAS SOME SITUATION LIKE THAT. I DON'T KNOW IF IT IS A FEDERAL CASE OR A STATE CASE, WHERE SOMETHING HAPPENED VERY QUICKLY, AND I KNOW THEY ENDED UP AFFIRMING, BECAUSE A TRIAL JUDGE I THINK THAT IS ONE OF THE CASES WHERE HE ACTUALLY DID ASK A COUPLE OF QUESTIONS, BECAUSE HE DIDN'T THINK TO DELIBERATIONS HAD BEGUN IN THAT CASE. THEY CLOSED THE JURY DOOR, AND I THINK THEY WERE JUST INTRODUCING ONE ANOTHER, WHEN SOMETHING HAPPENED, AND THEY ACTUALLY, I THINK THEY DIDN'T DELVE INTO JURY DELIBERATIONS BUT THEY MAY HAVE ASKED A QUESTION LIKE DID YOU BEGIN YOUR DELIBERATIONS ABOUT THIS CASE, RATHER THAN FORMALITIES OF MEETING, SHAKING HANDS AND VOTING FOR A FORM, AND I KNOW THERE IS ANOTHER -- FOR A FOREMAN, AND I KNOW THERE IS ANOTHER CASE THAT SAID WE ARE GOING TO DRAW A STRAIGHT LINE, THE SECOND THAT DOOR CLOSES, WE ARE GOING TO ASSUME DELIBERATIONS ARE TAKING PLACE, BECAUSE IT IS HARD TO DRAW A HARD AND FAST RULE THAT TAKES CARE OF THAT SITUATION. SO --

UNDER THOSE JURISDICTION THAT IS DO ALLOW IT, WHAT ARE THE PROTECTION THAT IS THEY PUT INTO PLACE?

WELL, THIS GOES BACK TO THE HARMLESS ERROR TEST, AND YOU HAVE TO, FIRST, LOOK AT THEIR DANGERS. ONE OF THE DANGERS THAT ALL OF THE COURTS ARE WORRIED ABOUT IS WHEN THE ALTERNATE IS EXCUSED FOR A WHILE OR LET GO INTO THE COMMUNITY, THAT, ONE, HE OR SHE HASN'T FORMED AN OPINION ABOUT THE CASE H THAT IS WHAT HAPPENED TO MAGILL, AND THAT HAS CAUSED REVERSAL IN THAT CASE FORM THE PROTECTION, AGAINST THAT DANGER HAPPENING, I GUESS, IS QUESTIONING THE JUROR BEFORE THEY ARE PLACED ON THE JURY WITH THE OTHERS TO DELIBERATE, MAKING SURE THEY HAVEN'T FORMED AN OPINION ABOUT THE CASE.

THAT WAS DONE HERE, APPARENTLY. THERE WAS SOME DISCUSSION WITH THE JUROR THAT WAS

CALLED BACK?

THERE WAS NOT A SINGLE QUESTION OF THE ALTERNATE WHO WAS CALLED BACK.

BUT NO -- THERE WAS AN OPPORTUNITY AND THE PARTIES DID NOT PARTAKE OF THAT. IS THAT THE WAY THAT IT HAPPENED?

THEY JUST, THE ALTERNATE WAS CALLED BACK AND PLACED ON THE JURY, AND THE COURT SAID HE WASN'T EVEN GOING TO REINSTRUCT THE JURY, THE ALTERNATE ON THE INSTRUCTIONS HE HAD GIVEN BEFORE FOR THE GUILT PHASE, BECAUSE HE FELT IT WASN'T NECESSARY. THE ALTERNATE WAS PRESENT FOR THOSE.

WAS THE ALTERNATE INSTRUCTED, THOUGH, WHEN HE WAS SENT BACK, TO THE GENERAL JURY ROOM, TO STAY PURE? SO TO SPEAK. THAT IS TO NOT DISCUSS THE CASE AND NOT READ ANYTHING ABOUT IT, BECAUSE HE POTENTIALLY WOULD BE CALLED BACK?

WHEN SHE WAS ORIGINALLY?

ARE WE JUST TALKING ABOUT ONE ALTERNATE, BY THE WAY?

THAT JOINS THE JURY, EVENTUALLY.

NOT. I REALIZE THAT.

THERE WERE THREE ALTERNATES.

RIGHT.

WERE THEY ALL GIVEN PRECAUTIONARY INSTRUCTIONS?

THEY WEREN'T. EXCEPT FOR ONE THING. THEY WEREN'T GIVEN ANY PRECAUTIONARY INSTRUCTIONS TO NOT FORM AN OPINION ABOUT THE CASE. THEY WERE GIVEN AN INSTRUCTION -- THEY WEREN'T GIVEN AN INSTRUCTION NOT TO READ, WATCH TV, OR LISTEN TO THE RADIO.

WERE THEY TOLD NOT TO TALK ABOUT IT?

BUT THEY WERE TOLD NOT TO DISCUSS IT WITH OTHERS, AND THEY WERE TOLD NOT TO READ ABOUT IT.

WERE THEY TOLD NOT TO DISCUSS IT WITH EACH OTHER?

WITH OTHERS. THEY DIDN'T SPECIFICALLY SAY WITH EACH OTHER. BUT HE DID SAY NOT TO DISCUSS IT WITH OTHERS. THE ONE THING I WOULD NOTE ABOUT THAT, CLEARLY THE ONE ADMONITION ABOUT FORMING AN OPINION WASN'T GIVEN, BUT EVEN IN CASES THAT REASON THIS OUT, LIKE THE BURNETT CASE OUT OF COLORADO AND THE PLATE CASE OUT OF ALASKA, SIMILAR ADMONITIONS WERE GIVEN -- ADMONITIONS WERE ACTUALLY GIVEN IN THAT CASE, AND THEY SAY THAT IS NOT ENOUGH. YOU NEED TO QUESTION THE JURORS WHEN THEY COME BACK, TO MAKE SURE THEY HAVEN'T STARTED FORMING OPINIONS WHO HAVE BEEN TAINTED BEFORE.

NOW, ISN'T -- JUST HAVING TO DO THAT, THE VERY PROBLEMS, SAY, WELL, HOW FAR HAVE YOU GOTTEN IN YOUR DELIBERATIONS? HAVE YOU FORMED OPINIONS? IF YOU HAVE, YOU ARE GOING TO, NOW, HAVE TO SET THOSE OPINIONS ASIDE, BECAUSE WE ARE STARTING AND NEW?

YOU -- STARTING A NEW? -- STARTING ANEW?

YOU MEAN INFORMING THE JURY OF THAT?

NO. IN TALKING TO THE 11 JURORS THAT HAVE BEEN IN THERE FOR HOURS, ARE THERE SOME STATES THAT WOULD ALLOW THE JUDGE TO BE QUESTIONING THE JURY INDIVIDUALLY? HAVE YOU FORMED MIGHT NOT PINIONS YET, AND IF YOU HAVE, YOU HAVE GOT TO -- OPINIONS YET, AND IF YOU HAVE, YOU HAVE GOT TO UNFORM THEM?

IF YOU ARE GOING TO DO A TEST ON THESE PROCEDURAL SAFEGUARDS, YOU BETTER ASK THEM TO DISREGARD THEIR PRIOR DELIBERATIONS AND THEN, YOU KNOW, THAT IS A HARD THING TO DO. YOU BETTER ASK THEM IF THEY ARE CAPABLE OF DOING SO. BUT YOU DON'T ASK THEM, YOU KNOW EXACTLY WHAT THOSE DELIBERATIONS WERE. AND IT IS A DANGEROUS THING, AND I THINK THAT IS WHY SOME STATES GO TOWARD A PER SE OR AUTOMATIC REVERSAL RULE, BECAUSE YOU CAN ACCIDENTALLY START DEAFING INTO THE CONFIDENTIAL AND SECRECY OF DELIBERATIONS.

DO WE KNOW IN THIS CASE, FOR EXAMPLE, WHETHER THEY HAD TAKEN ANY VOTES?

NO.

SO WE DON'T KNOW, IN THIS CASE, WHETHER IT WAS, LIKE, A 11-1 VOTE OR WHATEVER AND THAT THIS JUROR THAT CAME OUT OF THE JURY ROOM WAS THE ONE?

WE DON'T HAVE ANY SUPER HARD EVIDENCE AS TO THAT. THAT IS --

WAS THERE ANY MOTION MADE TO INTERVIEW THE JURORS, AFTER THIS CASE WAS CONCLUDED?

I DON'T BELIEVE THERE WAS.

UNDER OUR CASE LAW, WHAT COULD HAVE BEEN INQUIRED INTO OF THE JURORS, TO FIND OUT ABOUT THE -- ABOUT THIS? COULD THERE HAVE BEEN INQUIRY AS TO THE VOTE STATUS OR THE DELIBERATIONS?

I DON'T THINK YOU COULD DO ANYTHING REALISTICALLY. I THINK YOU ARE GETTING INTO THE DANGEROUS TERRITORY, AND I KNOW OF NOTHING THAT WOULD ALLOW TO START ASKING JURORS, YOU KNOW, WHAT WAS YOUR VOTE STATUS AT THIS TIME AS OPPOSED TO THAT TIME. YOU ARE GETTING INTO SOMETHING THAT FLORIDA, I THINK, IS RECOGNIZING THE CONFIDENTIALITY OF JURY DELIBERATIONS, MORE THAN ANY OTHER STATE. AND AS I WAS SAYING BEFORE, I THINK FLORIDA HAS, ALREADY, ADOPTED AN AUTOMATIC REVERSAL POSITION, WHERE THE INTEGRITY OF JURY DELIBERATIONS HAS BEEN POTENTIALLY COMPROMISED, THAN IS A SITUATION WHERE -- AND THAT IS A SITUATION WHERE AN ALTERNATE GOES IN WITH THE JURY DURING DELIBERATIONS. I HAVE CITED A BUNCH OF CASES IN MY BRIEF. LUDAWAY, LAMORITH, FISHER, SLOAN AND THEY ALL TALK ABOUT, IF A MISTRIAL IS QUESTIONED AT THIS POINT, IT HAS GOT TO BE GIVEN. JUSTICE SHAW, I MEAN JUSTICE GRIMES, WHEN HE WAS ON THE SECOND DCA, SAID THAT IN SLOAN. AND I THINK THE WHOLE BASIS IS THAT YOU CAN'T DO AN EFFECTIVE HARMLESS ERROR TEST FOR THIS TYPE OF ERROR, WITHOUT INVADING JURY DELIBERATIONS. SO I THINK THE REAL QUESTION, HERE, IS -- AND THIS HAD BEEN APPLIED IN OTHER STATES, THIS AUTOMATIC REVERSAL. BUNNING, IN NORTH CAROLINA, IS A CAPITAL CASE THAT IS SIMILAR TO THIS, AND THEIR REASONING WAS THE SECRECY OF JURY DELIBERATIONS. WE DON'T WANT TO GET INTO. AND PEOPLE VERSUS RHEINE WAS, ALSO, AN INTERESTING CASE, BUT DESPITE THE FACT THAT THEY HAVE A RULE THAT WOULD ALLOW TO YOU SUBSTITUTE AFTER DELIBERATIONS HAVE BEGUN, THEY FOUND THAT THEIR CONSTITUTIONAL RIGHT TO A JURY OF TWELVE WOULD BE VIOLATED AND, AGAIN, THEY TALKED ABOUT THE SECRECY OF JURY DELIBERATIONS.

COULD THE TRIAL JUDGE, IN THIS CASE, HAVE MADE THE JUROR GO BACK INTO THE JURY ROOM? I MEAN SHE WASN'T ILL, AS I UNDERSTAND IT. SHE JUST DIDN'T WANT TO DO IT, BASICALLY.

THAT IS THE CONTENTION AND MY POINT, TOO, THAT THERE WASN'T AN ADEQUATE INQUIRY INTO WHAT TYPES OF PROBLEMS SHE WAS HAVING, WHETHER IT WAS PERSONAL, WHICH HAD DIDN'T INDICATE IT WAS, OR WHETHER IT WAS RELATED TO THE FACTS OF THE CASE AND SHE WAS JUST HAVING TROUBLES WITH THAT.

BUT DIDN'T THE COURT GIVE THE OPPORTUNITY FOR OTHER QUESTIONS AT THE TIME, I GUESS IT WAS JUROR WALLACE, VOICED THESE CONCERNS, AND DID THE DEFENSE ASK THAT THE COURT DO ANYTHING OTHER THAN WHAT WAS DONE?

YOU KNOW, ON THIS ISSUE I HAVE TO CANDIDLY ADMIT IT IS TOTALLY UNPRESERVED BY ANY ACTIONS OF THE TRIAL ATTORNEY, BECAUSE HE AGREED TO REMOVEING THAT JUROR. HE THOUGHT, APPARENTLY, THERE WERE JUST GROUNDS, AND MY POINT, TOO, JUST COMPLAINS THAT THERE WASN'T AN ADEQUATE INQUIRY, AND THE REASON I THINK IT IS FUNDAMENTAL ERROR AND SHOULD BE LOOKED AT CLOSELY, THAT ISSUE, IS I CAN'T THINK OF ANYTHING, REALLY, MORE FUNDAMENTAL THAN REMOVING A JUROR, IF YOU ARE NOT -- DON'T HAVE EVERYTHING LAID OUT TO MAKE PERFECTLY CLEAR THAT IT IS HER PROBLEMS MAY NOT BE RELATED TO THE FACTS OF THE CASE. I THINK YOU HAVE TO MAKE THAT CLEAR, AND THE JUDGE, YOU KNOW, THE JUDGE HAD POWERS TO DO OTHER THICKS, IF, MAYBE, EVEN -- OTHER THINGS, IF, MAYBE EVEN A RECESS OR LET THE JURY REST FOR AN HOUR OR SO, TO SEE IF THIS CONDITION WOULD CHANGE.

WAS THERE A POST TRIAL MOTION FOR A NEW TRIAL, BASED ON THE JUROR NOT DISCLOSING INFORMATION RELEVANT INFORMATION, DURING VOIR DIRE?

I DON'T THINK IT IS -- I DON'T THINK IT IS A MATTER. I DON'T THINK ANY -- THE STATE KIND OF --

I AM NOT ASKING WHETHER -- I AM ASKING WHETHER THERE WAS.

NO. THERE WASN'T. AND I WOULD KNOW IT. I DON'T THINK -- I THINK THE JUROR HONESTLY BELIEVED SHE COULD DO DELIBERATION IN HIS THIS CASE. IT REALLY WASN'T UNTIL AFTER DELIBERATIONS WENT ON FOR A WHILE THAT SHE FOUND OUT SHE COULDN'T.

WASN'T THERE SOMETHING ABOUT HER SON HAVING BEEN INVOLVED IN A CRIMINAL PROCEEDING?

HER SON, SHE SAID, YOU KNOW, WHEN SHE WAS ASKED ABOUT THIS, SHE WAS KIND OF RAMBLING, BUT SHE SAID, YOU KNOW, SHE WAS FIRST ASKED, SAYS, I CAN'T DO THIS. I CAN'T DO THIS. MY SON HAD BEEN ACCUSED OF OF A CRIME HE DIDN'T DO -- ACCUSED OF A CRIME HE DIDN'T DO AND I WAS THERE FOR THAT, AND I CAN'T GO THROUGH THIS AGAIN.

WEREN'T THERE QUESTIONS ABOUT THAT ISSUE IN THE VOIR DIRE STAGE?

THERE WERE QUESTIONS ABOUT IS THERE ANYTHING THAT WOULD CAUSE YOU NOT TO BE ABLE TO SERVE AS A JUROR ON THIS CASE?

THERE WERE QUESTIONS, ON, WAS THERE NOT A QUESTIONNAIRE? IT IS MY UNDERSTANDING A QUESTIONNAIRE ABOUT ANYONE IN YOUR FAMILY INVOLVED WITH THE LAW OR LEGAL PROCEEDINGS, AND, ALSO, WAS IT NOT ASKED, DURING THE VOIR DIRE, ANYONE HERE WHO HAS HAD YOU OR YOUR FAMILY HAS BEEN INVOLVED WITH AN ARREST OR THE LEGAL SYSTEM, AND NO ONE, THIS JUROR DIDN'T VOLUNTEER.

I -- TO BE HONEST, I DON'T RECALL AT THIS TIME.

THAT AVENUE WASN'T EXPLORED, IT WASN'T A MOTION FOR A NEW TRIAL THAT SAID THIS JUROR, NOW, IS APPARENTLY TELLING US THAT HER SON HAD BEEN INVOLVED IN A CRIMINAL CRIME

TRIAL AND ACQUITTED, BUT IT WAS A TERRIBLE EXPERIENCE, AND WE ASKED HER ABOUT THAT O'CLOCK, IN THE QUESTIONNAIRE, AND ON THE VOIR DIRE, AND SHE DIDN'T DISCLOSE THAT -- AND WE ASKED HER ABOUT THAT, IN THE QUESTIONNAIRE AND ON THE VOIR DIRE, AND SHE DIDN'T DISCLOSE THAT?

THERE WERE NO POST-TRIAL MOTIONS ON THE COMPLAINT. I HAVE MADE MY ARGUMENT, I GUESS TOTALLY, AS TO WHY I THINK THIS SHOULD BE AUTOMATIC REVERSAL, BUT LOOKING AT A FEW THINGS THIS THIS CASE, TO, IF THIS COURT DOES DECIDE TO DO HARMLESS ERROR TEST, YOU KNOW, SOME OF THE --

YOUR POSITION IS IT IS AUTOMATIC REVERSAL FOR THE REASON OF THE DENIAL OF THE MISTRIAL. IS THAT CORRECT?

WELL, IT IS -- THAT IS THE ONLY REMEDY AT THAT POINT, IF YOU ARE -- IF THE SUBSTITUTION IS IMPROPER, YOU KNOW, MISTRIAL IS THE ONLY AVENUE TO GO AT THAT POINT. THERE IS NOTHING ELSE THAT COULD BE -- HAVE BEEN DONE DOWN BELOW. SO, YES.

ASSUMING THERE IS A NEW TRIAL IS THERE ANY DOUBLE JEOPARDY PROBLEMS IN THIS CASE?

NO. I DON'T THINK THERE ARE. I MOON, IT IS -- WASN'T A SITUATION CAUSED BY A PROSECUTOR OR ANYTHING, WHERE -- THERE WOULD BE NO DOUBLE JEOPARDY PROBLEMS THAT I WOULD SEE. I THINK THAT HAS BEEN REJECTED BY COURTS BEFORE.

YOU ARE IN REBUTTAL. IF YOU WISH TO SAVE SOME TIME, YOU MAY, BUT YOU MAY CONTINUE.

OKAY. I WILL SAVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

VERY WELL.

> GOOD MORNING. MAY IT PLEASE THE COURT. LESLIE CAMPBELL, ASSISTANT STATE ATTORNEY -- ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA FOR THE APPELLEE. CONTRARY TO THE APPELLANT'S POSITION, THIS COURT SHOULD AFFIRM BOTH THE CONVICTION AND SENTENCE OF THE DEFENDANT. FOR THE FIRST-DEGREE MURDER OF LISA DIKES, AND JUST TO PUT THIS ALL IN PERSPECTIVE, LET ME GIVE THE COURT SOME OF THE FACTS OF THE CASE. MS. DYKES WAS BITTEN, RAPED, AND MURDERED. SHE WAS STABBED SEVEN TIMES. ONCE TO THE CHEST THAT WENT THROUGH THE STERNUM AND HIT HER LUNGS AND INTO THE BACK RIB AND ONE OTHER MAJOR STAB WOUND TO THE BACK, WHICH WENT THROUGH THE OTHER LUNG. SHE, ALSO, WAS BITTEN SEVERAL TIMES. SHE WAS BITTEN ON HER BREAST. SHE WAS BITTEN ON HER BACK, HER SHOULDER, HER LEG, AND DOWN NEAR HER VAJ ION.

ARE YOU SUGGESTING THAT THE ANALYSIS OF THE JUROR ISSUE SHOULD TURN ON HOW HEINOUS A CRIME THIS WAS?

NO. I AM NOT SUGGESTING THAT, YOUR HONOR. I JUST WANT TO PUT THE CASE IN PERSPECTIVE.

I WAS TRYING TO UNDERSTAND WHAT THE RELEVANCE WAS TO THE ISSUE THAT YOUR OPPONENT HAS ARGUED TODAY.

IT DOES GO, SOMEWHAT, TO A HARMLESS ERROR ANALYSIS, IN THE FACT THAT THE FACTS OF THIS CASE THE EVIDENCE THAT WAS PRESENTED AT TRIAL, SHOW THAT THIS DEFENDANT IS THE PARTY WHO COMMITTED THE CRIME. HOWEVER --

WE ARE LOOKING TO THE JURY PROCESS.

SURE.

DO THE COURTS LOOK TO SEE, WELL, WE MAY HAVE HAD AN IMPROPER JURY AND IT MAY AND BAD JURY, BUT THEY GOT THE RIGHT RESULTS, SO WHAT THE HECK, OR DOES THE LAW, IN OUR JURISPRUDENCE THROUGHOUT THE COUNTRY, SUGGEST TO US THAT, TO PRESERVE THE JURY SYSTEM, THAT WE MUST HAVE A PROPERLY PROPERLY-CONSTITUTED PANEL TO MAKE THE DECISION, WITHOUT REGARD TO WHATEVER IT MAY OR MAY NOT HAVE DONE?

THE MAJOR FOCUS OF THE COURTS IS ON THE CONSTITUTION OF THE JURY. TUSH TURNING TO THAT POINT -- TURNING TO THAT POINT THERE, ARE TWO FACTORS THAT TAKE THIS CASE OUT OF THE REALM OF ALL OF THE OTHER CASES THAT HAVE BEEN DECIDED IN FLORIDA. ONE, THE JUROR WAS NOT -- THE ALTERNATE WAS NOT DISCHARGED. THAT ALTERNATE STAYED, UNDER THE PROTECTION AND DIRECTION OF THE COURT AT ALL TIMES. THE ALTERNATE WAS NOT TAINTED. THE ALTERNATE WAS SENT HOME, EXCUSED FROM DELIBERATIONS FOR -- OR FROM THE TRIAL FOR A PERIOD OF TIME, BUT TOLD NOT TO READ OR DISCUSS THE CASE.

BUT IN THAT VEIN --

EXCUSE ME. I AM SORRY.

IN THAT VAIN, IF -- IN THAT VEIN, IF THE REGULAR TWELVE JURORS BEGIN THEIR DELIBERATIONS AND IT IS NOW TEN O'CLOCK AT NIGHT, AND THERE IS NO INDICATION THEY ARE GOING TO COME TO ANY KIND OF DECISION BEFOREHAND. WE HAVE TO SEQUESTER THOSE JURORS, DON'T WE? YOU PUT THEM UP OVERNIGHT. YOU DON'T LET THEM GO HOME AND ALL OF THAT. CORRECT?

NORMALLY THEY WOULD BE SEQUESTERED.

HOW DOES THAT PLAY INTO THE FACT THAT THIS PARTICULAR JUROR, WHO WAS SUBSTITUTED, HAD, IN FACT, BEEN OUT AND ABOUT AND IN THE COMMUNITY, PRIOR TO JOINING WITH THE OTHER ELEVEN FOR THEIR DELIBERATIONS?

WELL, THE JURORS ARE, ALSO, SENT HOME DURING THE TRIAL, AND THEY ARE PRESUMED TO FOLLOW THE INSTRUCTIONS OF THE COURT AT ALL TIMES, AND DURING THOSE EVENING RECESSES, THEY ARE TOLD NOT TO DISCUSS THE CASE, NOT TO READ ABOUT THE CASE. AND THEREFORE THEY ARE STILL UNTAINTED WHEN 24E THEY COME BACK.

-- UNTAINTED WHEN THEY COME BACK.

THIS IS DURING THE COURSE OF THE TRIAL.

NO. I WOULD AGREE.

THE WHOLE QUESTION THAT YOU ARE BEING ASKED IS THE RULE ABOUT AFTER DELIBERATIONS HAVE BEGUN, THAT THE JURORS, NOT WHAT HAPPENED DURING THE COURSE OF THE TRIAL, SO HOW DO YOU DISTINGUISH THIS FROM THAT SITUATION, WHERE THE JURORS ARE NOT ALLOWED TO BE SEPARATED AND HERE, OF COURSE, THERE IS A SEPARATION?

TWO-WAYS. ONE, YOU CAN WAIVE THAT SEQUESTRATION. THE DEFENDANT COULD SAY THEY ARE FINE. THEY CAN GO HOME. SO THAT IS NOT NECESSARILY A CONSTITUTIONAL ISSUE. AND NUMBER TWO, WE DON'T HAVE THAT IN THIS CASE. THE JUROR WAS A WAY FROM THE -- THE ALTERNATE WAS A WAY FOR JUST A SHORT PERIOD OF TIME, AND THOSE DELIBERATING JURORS --

YOU ARE SAYING THAT, IF A JUROR WENT HOME FOR FOUR AND-A-HALF HOURS OR WHATEVER THE TIME, THAT IT WOULDN'T VIOLATE OUR RULE OF SEQUESTRATION, AS WE HAVE ANNOUNCED IT?

IF THE -- IF SEQUESTRATION HAD BEEN IMPOSED, THAT IS AN ISSUE THAT I HAVEN'T LOOKED AT.

THAT IS THE QUESTION THAT IS BEING ASKED HERE, AND THEN YOU HAVE, ALSO, MENTIONED WAIVER. THAT IS -- THERE IS NO INDICATION AFTER WAIVER HERE, FROM THE RULE OF SEQUESTRATION, IS THERE?

NO. BUT THE JURY WAS NOT SEQUESTERED.

OF COURSE. BECAUSE THE JUROR WASN'T EXPECTED TO SERVE ON THE JURY. LET ME ASK YOU, WOULD YOUR POSITION BE THE SAME IF, FOR INSTANCE, WE SOMEHOW HAD HAD AN INQUIRY OR THERE WAS A VIDEO CAMERA OR WHATEVER, AND IT HAD BEEN DISCLOSED THAT THERE WAS A 11-1 VOTE OF THE JURY, AND THIS JUROR THAT CAME OUT, ALL DISTRAUGHT, WAS THE ONE, AND WAS A HOLD OUT, AND THAT THAT WAS THE CIRCUMSTANCE, GIVING RISE TO HER LEAVING? THAT IS THAT SHE WAS THE ONE, AND APPARENTLY SHE COULDN'T HANDLE THE PRESSURE FROM THE OTHER ELEVEN, OF GETTING ON TO HER ABOUT HOLDING OUT. WOULD YOUR POSITION BE THE SAME?

THE COURT, OF COURSE, IS NOT SUPPOSED TO LOOK AT THE DELIBERATIONS, BUT KNOWING THE FACT THAT IT WAS A MATTER OF THE 11 IMPOSING THEIR WILL ON THE ONE, THEN I WOULD HAVE TO AGREE THAT --

HOW DO WE KNOW, IN THIS CASE THAT, THAT DIDN'T HAPPEN?

BECAUSE WE HAVE --

DO WE KNOW?

YES. YES, WE DO KNOW.

WE DO KNOW. THE JURY SAID, JUROR WALLACE SAID THAT SHE COULD NOT GO ON. SHE COULDN'T MAKE A DECISION, ONE WAY OR THE OTHER. EVEN IF SHE WENT BACK AND DELIBERATED FOR DAYS, SHE COULD NOT VOTE.

HOW DO WE KNOW, THEN, THAT THAT IS NOT THE POSITION THAT THE OTHER 11 COULD VOTE AND HAD VOTED, BUT THAT SHE REFUSED TO VOTE?

BECAUSE WHEN THE ALTERNATE IS BROUGHT BACK IN, AND THEY ARE TOLD TO DELIBERATE ANEW, THERE WERE FURTHER DELIBERATIONS. THEY DELIBERATED FOR APPROXIMATELY THREE HOURS. THEY ASKED FOR ADDITIONAL TESTIMONY TO BE READ BACK TO THEM. THEREFORE WE KNOW THAT THOSE JURORS WERE FOLLOWING THE COURT'S ORDER, WHICH WAS TO BEGIN DELIBERATIONS ANEW.

DO WE KNOW WHETHER OR NOT THE JURY HAD TAKEN ANY VOTES?

NO. OF COURSE NOT. BECAUSE WE ARE NOT SUPPOSED TO DELVE INTO THE DELIBERATIONS.

SO THE JURY COULD HAVE TAKEN VOTES.

A LOT OF THINGS COULD HAVE HAPPENED. HOWEVER, THE EVIDENCE THAT WE HAVE --

WE DON'T KNOW. IS THAT CORRECT?

THE EVIDENCE BEFORE US IS THAT THEY DIDN'T.

WHERE IS THAT EVIDENCE, AGAIN?

BECAUSE WHEN THEY STARTED -- WHEN THEY STARTED -- LET ME BACK UP. WE ARE ALL ASSUMING THAT IT WAS FOUR, FOUR AND-A-HALF HOURS' DELIBERATIONS, BUT THAT IS NOT NECESSARILY THE CASE THAT THE FULL FOUR HOURS WAS DELIBERATIONS AND VOTING AND DECIDING AND THINGS LIKE THAT, WITHIN THE JURY ROOM. ONE, THEY HAD TO VOTE ON A FOREMAN. TWO, WHICH IS NOT CONSIDERED PART OF DELIBERATIONS. TWO, THEY ASKED FOR SOME OF THE TRIAL EVIDENCE TO BE SENT BACK IN, AND, THREE, THEY HAD LUNCH, SO IT WASN'T A FULL THREE, FOUR HOURS 6 DLIB RATE HOURS OF DELIBERATING.

NONE OF THOSE THINGS RULE OUT FOR INSTANCE, WE MAY HAVE JURORS THAT THE FOREMAN SAYS WHY DON'T WE TAKE A PRELIMINARY VOTE, AND WE ARE GOING TO AGREE THAT THAT IS NOT GOING TO BE BINDING ON ALL OF US, BUT LET'S TAKE A VOTE FIRST, JUST SEE WHERE WE STAND, AND THEN WE WILL STRUCTURE OUR DISCUSSIONS. NOW, DO WE KNOW WHETHER SOMETHING LIKE THAT HAPPENED?

NO. WE DO NOT, EXCEPT THAT WE KNOW THAT, DURING THAT FOUR-HOUR PERIOD, THAT WHEN THEY WERE TRYING TO DISCUSS THE CASE, JUROR WALLACE MERELY CRIED, SO IF SHE IS TRYING AND -- CRYING AND CAN'T COME TO A DECISION, THEN IT DOESN'T SEEM LIKE ANY VOTE WAS TAKEN ACHT.

WE KNOW THAT SHE WAS CRYING ALL DURING THE DELIBERATIONS?

THAT IS WHAT SHE SAYS. THEY TALK ABOUT IT AND SHE CRIES. THEY TALK ABOUT SOMETHING ELSE AND SHE CRIES. THEREFORE SHE IS NOT PARTICIPATING.

I AM SORRY. TELL ME WHERE, IN THE RECORD --

DURING HER DISCUSSION WITH THE COURT, WHEN SHE IS EXPLAINING WHY SHE IS EMOTIONALLY DISABLED AND CAN'T CONTINUE, SHE IS EXPLAINING THAT SHE IS CRYING DURING THE TIME THAT THEY ARE DISCUSSING THE CASE.

DURING THE TIME THE JURY IS OR DURING THE TIME THEY ARE DISCUSSING IT IN OPEN COURT?

NO. DURING THE TIME THAT THE JURY IS DISCUSSING THE CASE. SO TO ME, THAT INDICATES THAT THEY ARE NOT VOTING. THEY ARE DISCUSSING IT AND SHE IS NOT PARTICIPATING.

IF WE WERE TO TRY TO CONSTRUCT A HARMLESS ERROR TEST FOR THIS ANALYSIS, WHAT WOULD BE THE BASIS FOR HARMLESS ERROR REVIEW OF THIS TYPE OF SITUATION?

WELL, FIRST OF ALL, THE STATE'S POSITION IS THAT AN ALTERNATE WHO HAS NOT BEEN DISCHARGED MAY BE SEATED ON THE JURY.

SO IT IS NO ERROR.

AND THAT IT WOULD BE NO ERROR. HOWEVER, IF THE COURT ASSUMES THAT THERE IS A ERROR AND YOU WANT TO LOOK AT THIS CASE TO SAY WAS IT HARMFUL OR NOT, THEN YOU LOOK AT WHAT WAS DISCUSSED WITH THE JURY. ONE, IT THAT THE ALTERNATE WAS TOLD NOT TO DISCUSS THE CASE OR READ ABOUT IT, AND, TWO, THAT THE JURY WAS TOLD THREE TIMES THAT THEY HAVE TO BEGIN DELIBERATIONS ANEW, AND IF YOU LOOK AT THE FEDERAL RULE, WHICH IS 24-C-3, THAT IS ALL THE JUDGE HAS TO SAY. THE JUDGE HAS THE AUTHORITY TO UNION LATLY PUT AN ALTERNATE ON, SHOULD A JUROR BECOME INCAPACITATED, AND ALL HE HAS TO TELL THE JURY IS BEGIN DELIBERATIONS ANEW, AND IT IS PRESUMED THAT ALL OF THE JURORS FOLLOW THE COURT'S INSTRUCTION AND START FROM THE BEGINNING.

SO IT IS NOT REALLY RELEVANT WHAT THAT ALTERNATE JUROR MAY HAVE DONE, DURING THE FOUR AND-A-HALF HOURS OR WHATEVER IT WAS, THAT SHE WAS AWAY FROM THE

COURTHOUSE?

RELEVANT AS TO WHETHER SHE READ SOMETHING?

YEAH. I MEAN, SO NO INQUIRY NEEDS TO BE DONE, AS TO WHAT THE JUROR MAY HAVE DONE DURING THAT PERIOD?

EXTRA PRECAUTIONS, I SUPPOSE, COULD BE INSTITUTED, TO ASK THE JUROR, ASK THE ALTERNATE, HAVE YOU READ ANYTHING? HAVE YOU FOLLOWED THE COURT'S INSTRUCTION AND NOT READ ANYTHING? WHICH IS THE NORMAL QUESTION THAT IS ASKED AT THE BEGINNING OF EACH NEW TRIAL DAY, WHEN JURORS ARE COMING BACK IN FOR ANOTHER DAY OF TRIAL. HAVE YOU FOLLOWED THE COURT'S INSTRUCTIONS? HAVE YOU READ ANYTHING OR HAS ANYBODY TRIED TO INFLUENCE YOU OR TALK TO YOU? I SUPPOSE THAT THAT KIND OF QUESTION COULD HAVE BEEN ASKED OF THIS JUROR, BUT IT IS NOT NECESSARY. AS LONG AS THE JURORS ARE TOLD TO BEGIN ANEW, IN FACT, THE SITTING JURORS WERE TOLD THE IMPORTANCE OF THE -- OF DELIBERATING, AGAIN, ANEW, WITH THE ALTERNATE. THEY WERE TOLD THAT THE ALTERNATE COULD INFLUENCE THEM AND THEY COULD INFLUENCE HER. SO IT WAS ABUNDANTLY CLEAR THAT THEY WERE TO BEGIN DELIBERATIONS FROM THE START.

IS IT OF ANY IMPORTANCE THAT THE TRIAL JUDGE SUGGESTED THAT THE JURORS, WHO REMAINED, MAY CHANGE THEIR VIEWS, INDICATING THAT THEY HAD ALREADY COME TO SOME CONCLUSIONS AND MAYBE THEY COULD CHANGE WHAT THEY WANTED TO DO? THAT WORD WAS MENTIONED.

THAT WORD WAS MENTIONED.

IS THAT IMPORTANT OR DO YOU THINK NOT?

IT IS IMPORTANT, IN THAT THE JUDGE IS INDICATING THAT THERE IS A DYNAMIC TO THE NEW GROUP. AND THAT THEY SHOULD INFLUENCE EACH OTHER. I AM SURE HE DIDN'T MEAN IT THAT THERE WAS A VOTE OR THAT THERE WAS A DECISION OF THE BODY. HE WAS JUST -- HE WAS MERELY SAYING THAT THERE IS A NEW GROUP AND YOU NEED TO START FROM THE BEGINNING. AS FAR AS POINT TWO, WITH REGARD TO THE DISMISSAL OF THE ALTERNATE, I -- THE STATE'S POSITION IS THAT THERE WAS A SUFFICIENT INQUIRY. THE JUROR WALLACE WAS QUESTIONED AT LENGTH, AND IT WAS ABUNDANTLY CLEAR TO THE JUDGE AS WELL AS TO THE PARTIES, BECAUSE NEITHER PARTY ASKED ANY QUESTIONS, THAT THIS JUROR WAS INCAPACITATED EMOTIONALLY. SHE COULDN'T HANDLE THE STRESS OF THE SITUATION, AND SHE WOULD BE UNABLE TO FORM AN OPINION OR COME TO A VOTE.

YOU KNOW, I GUESS IT IS A LITTLE TROUBLESOME, BECAUSE YOU KNOW, JURY DUTY, ESPECIALLY IN A CAPITAL CASE, IS GOING TO BE A STRESSFUL SITUATION, AND SO YOU KNOW, IF SOMEONE JUST SAYS I DON'T WANT TO DO THIS, THAT IS IT? THAT IS IN ESSENCE WHAT SHE SAID. I JUST DON'T WANT TO DO THIS.

THAT IS THE BOTTOM LINE. HOWEVER, THERE WAS MORE TO IT THAN THAT. SHE MUST HAVE APPEARED EMOTIONALLY DISTRAUGHT TO THE COURT. SHE CERTAINLY TOLD THE COURT THAT SHE WAS CRYING, WHICH INDICATES AN EMOTIONAL DISTRESS, AND SHE GAVE THE BASIS, VOLUNTARILY, THAT IT WAS BECAUSE OF HER SON, WHO HAD BEEN INVOLVED IN THE CRIMINAL JUSTICE SYSTEM AND SHE COULDN'T GO THROUGH IT AGAIN. NOW, WOULD IT HAVE BEEN BETTER, HAD SHE BROUGHT THAT OUT IN VOIR DIRE? OF COURSE. BUT WE ARE STUCK WITH THE SITUATION THAT SHE WAITED UNTIL THE TIME THAT SHE ACTUALLY ENTERED THAT JURY ROOM. AND SO THE QUESTION BECOMES WHETHER OR NOT SHE WAS STILL COMPETENT TO SERVE, AND OBVIOUSLY SHE WAS NOT.

SO WHY WOULDN'T IT HAVE BEEN JUST A BETTER -- WHY SHOULDN'T THE TRIAL JUDGE HAVE

DECLARED A MISTRIAL?

FOR ALL OF THE PUBLIC POLICY REASONS. WE HAVE A MONTH-LONG TRIAL. WE HAVE JUDICIAL RESOURCES THAT WENT INTO THIS. WE HAVE THE WITNESSES THAT HAD TO COME IN AND TESTIFY, AND THERE WAS A FORENSIC CASE HERE, DID THE DNA EXPERTS, TWO OF THEM THE MEDICAL EXAMINER. WE HAVE MANY DIFFERENT WITNESSES THAT CAME IN, AND THE TIME AND EFFORT OF BOTH OF THE PUBLIC DEFENDER, THE SPECIAL PUBLIC DEFENDER, AS WELL AS THE STATE, TO THROW ALL OF THAT OUT, MERELY BECAUSE ONE JUROR REFUSED TO COME TO A DECISION, WHEN WE HAD A PERFECTLY PURE ALTERNATE AWAITING HER TURN TO SIT ON THE JURY.

WHY DON'T WE HAVE A RULE IN FLORIDA, IF THAT IS SUCH A GOOD IDEA, WHAT THE STATE IS ARGUING OR URGING HERE, IS THERE PLENTY OF NONCAPITAL CASES THAT GO ON FOR A VERY LONG PERIOD OF TIME. THAT IS WHY WE HAVE ALTERNATES, BECAUSE A JUROR MAY BECOME DISABLED OR SOMETHING ELSE MAY OCCUR. WHY DON'T WE, THEN, IN ALL CASES HAVE ALTERNATES HAVE TO BE PRESENT DURING DELIBERATIONS, UNLESS -- SO THAT IF THIS SITUATION OCCURS, WE CAN JUST GO AHEAD AND SUBSTITUTE, UNLESS -- THAT WOULD NEED TO BE IN THE RULES, BUT WOULD THE STATE URGE THAT THAT SHOULD BE EQUALLY IMPORTANT, IN A LONG NONCAPITAL CASE, AS A CAPITAL CASE, IF THAT IS WHAT WE ARE LOOKING AT, THE ECONOMY OF THE TRIAL'S ERRORS, AS OPPOSED TO SOMETHING UNIQUE ABOUT WHAT HAPPENS WHEN JURY DELIBERATIONS START.

NOT HAVING THOUGHT ABOUT IT IN THE NONCAPITAL SENSE, BECAUSE WE ARE DEALING WITH A CAPITAL CASE, IT WOULD SEEM REASONABLE TO HAVE THAT SORT OF RULE, JUST AS THE FEDERAL GOVERNMENT DOES.

WELL, WHAT WOULD YOU SAY, YOU KNOW, WHY ISN'T THE SAME RULE APPLICABLE, AGAIN, ON ANYTHING THAT COULD HAPTHEN THE JURY ROOM LIKE, AGAIN, AN ALTERNATE GOING IN OR A TRANSLATOR GOING IN? WHY SHOULDN'T WE HAVE HARMLESS ERROR RULES AS TO ALL THOSE SITUATIONS?

WELL, IN THE CASE AFTER TRANSLATOR OR WHERE AN ALTERNATE GOES IN, AND AN ALTERNATE IN THIS SENSE IS ONE THAT HAS BEEN ACTUALLY DISCHARGED, BECAUSE THAT WOULD BE THE CASE IN A NONCAPITAL CASE, UNDER THIS PARTICULAR RULE. THEN YOU, REALLY, DO HAVE A FOREIGN PERSON IN THE JURY ROOM, AND YOU DON'T WANT TO INVADE THE SANCTITY OF THE JURY. HOWEVER, IF THE ALTERNATE HAS NOT BEEN DISMISSED AND IS UNTAINTED, AS WE HAVE IN THIS CASE, THEN WHEN THE ALTERNATE GOES IN, WE HAVE A NEWLY-CONSTITUTED JURY THAT STARTS ITS DELIBERATIONS ANEW. I BELIEVE I HAVE ANSWERED YOUR QUESTION, BUT --

IN THE FEDERAL SYSTEM, ARE YOU SAYING THAT FOR ALL CASES, THAT THEY HAVE ALTERNATE JURORS AROUND FOR DELIBERATIONS? IS THAT --

IT IS ACTUALLY UP TO THE TRIAL COURT. THE TRIAL COURT, IN ITS DISCRETION CAN KEEP ALTERNATES ON HAND, AND THEY NORMALLY DO KEEP THEM ON HAND, WHEN IT IS A LONG TRIAL. THEY, ALSO, ALLOW FOR JUST STRAIGHT ELEVEN JURORS TO VOTE, AND THAT IS NOT UP TO THE DEFENDANT, EITHER, AND I WOULDN'T SUGGEST THAT IN THIS CASE, BUT AS FAR AS THE ALTERNATES ARE CONCERNED, IT IS LEFT UP TO THE TRIAL COURT TO KEEP THE ALTERNATES AROUND, IN CASE THEY HAVE TO BE REPLACED, SHOULD ONE OF THE JURORS BE DISMISSED. AND THE DISMISSAL HAS TO BE BASED ON A DISABILITY WITH THE JUROR. ILLNESS, INCAPACITATION, AND NOT SOMETHING THAT HAS TO DO WITH THE DELIBERATIONS OR THE WAY THAT THEY WERE VOTING IN ANY PARTICULAR FASHION.

IF THE FACTS IN THIS CASE WERE THAT THIS JUROR -- IS PRETTY CLOSE THAT SHE MAY HAVE MISREPRESENTED SOMETHING, BUT WHAT IF, DURING THE COURSE OF THE DELIBERATIONS, IT COMES OUT SPECIFICALLY THAT A JUROR HAS ACTUALLY LIED ABOUT SOMETHING, AND THAT IS

THE REASON THE JUROR, THEN, IS TAKEN OFF, IS THAT, THEN, CAN THAT BE SUBJECT TO HARMLESS ERROR ANALYSIS, IF YOU GOT THE ALTERNATE THERE?

LIED IN WHAT RESPECT?

ABOUT SOMETHING, ABOUT WHETHER THEY HAD A CRIMINAL HISTORY OR A LAW ENFORCEMENT BACKGROUND OR ANYTHING THAT WOULD QUALIFY FOR A NEW TRIAL, IF IT WAS DISCOVERED AFTER THE DELIBERATIONS.

I WOULD SUPPOSE THAT, IF THE JUROR HAS LIED AND IT COMES OUT THAT THERE WAS A BASIS FOR DISMISSING HER AND SHE WAS INCAPACITATED BECAUSE OF THAT, THEN I THINK YOU COULD DO A HARMLESS ERROR TEST. BUT I AM NOT SURE HOW THAT WOULD --

YOU DON'T REALLY KNOW WHAT THAT JUROR HAD SAID IN THE JURY ROOM, AND ISN'T THAT REALLY -- I GUESS THE PROBLEM SEEMS MORE PRONOUNCED HERE, BECAUSE IT HAS TO DO WITH SOME EMOTIONAL ISSUES THAT HAVE TO DO WITH A FACT OF NONDISCLOSURE ABOUT A SON THAT HAD CRIMINAL ACTIVITIES, THAN IF IT SIMPLY WAS THAT SHE HAD GOTTEN ILL IN THE COURSE OF THE TRIAL. SO I THINK THAT IS WHY I HAVE GREATER CONCERN, IN THIS CASE, THAN I MIGHT, IF THIS WAS A TECHNICAL THING THAT THIS HAD HAPPENED, YOU KNOW, SOMETHING, A JUROR GOT SICK IN THE MIDDLE OF THE DELIBERATIONS.

BUT SHE, IN ESSENCE, DID GET SICK IN THE MIDDLE OF DELIBERATIONS. SHE BECAME EMOTIONALLY INCAPACITATED. SHE -- SHE WASN'T DECLARED MENTALLY INCOMPETENT. SHE WAS SO INCAPACITATED BY HER PRIOR EXPERIENCE THAT SHE COULDN'T PARTICIPATE AND FULFILL HER DUTIES AS A JUROR, SO THERE REALLY ISN'T MUCH DIFFERENCE BETWEEN AN ILLNESS DUE TO AMEND OCEANAL DEFECT, OR AN ILLNESS DUE -- DUE TO A EMOTIONAL DE FACTO AN ILLNESS DUE TO A HEART ATTACK OR -- EMOTIONAL DEFECT, OR AN ILLNESS DUE TO A HEART ATTACK OR A DEATH IN THE FAMILY.

WOULD YOU, ALSO, SPEAK ABOUT THE STATEMENTS FROM THE VICTIM AND SOME PHYSICAL EVIDENCE, AND WOULD YOU PUT THAT IN PERSPECTIVE FOR ALL OF US, PLEASE.

THERE WAS MORE THAN SUFFICIENT EVIDENCE TO SHOW A SEXUAL BATTERY IN THIS CASE. WE HAVE THE VICTIM, BEFORE EIGHT O'CLOCK IN THE MORNING, FULLY DRESSED, NEAT AND CLEAN. WE, THEN, HAVE HER RUNNING THROUGH THE APARTMENT, SCREAMING FOR HELP. A SHORT TIME LATER, A PHONE CALL IS MADE TO 911, WHERE SHE CLAIMS THAT THE DEFENDANT RAPED HER AND STABBED HER. WHEN THE POLICE ARRIVE, THEY FIND HER NUDE, TRYING TO COVER HERSELF WITH SOME SWEAT PANTS, AND BLEEDING PROFUSELY FROM STAB WOUNDS. THEY, ALSO, FIND IN THE BATHROOM A SHIRT THAT IS TORN, THE SAME SHIRT THAT SHE WAS WEARING THAT MORNING. IT IS TORN AND BLOODY. THEY, ALSO, FIND HER SHORTS AND UNDERWEAR, AS IF THEY WERE TAKEN OFF AS ONE, IN THE BED SHEETS. THERE IS BLOOD FROM THE BEDROOM TO THE BATHROOM, AND THERE ARE BITE MARKS ALL OVER HER BODY. ON HER BACK, HER SHOULDER, HER ARMS, HER BREAST, AND NEAR HER VAJ ION A THOSE, ALL OF THOSE THINGS TAKEN TOGETHER, CERTAINLY INDICATE THAT THERE WAS A SEXUAL BATTERY. THAT OCCURRED IN THIS CASE.

WAS THERE SOME QUESTION AS TO WHO MENTIONED RAPE FIRST, WHETHER IT WAS THE VICTIM OR -- I CAN'T REMEMBER THE PERSON'S NAME.

THE 911 OPERATOR?

NO. I BELIEVE IT WAS THE VICTIM WHO SAID RONNIE RAPED ME.

IS THERE SOMEBODY --

GILLESPIE IS THE POLICE OFFICER. IT WAS ON THE 911 TAPE FIRST. SO WE HAVE THE VICTIM MAKING A STATEMENT THAT SHE HAD BEEN RAPED AND WE HAVE ALL OF THIS OTHER EVIDENCE THAT CERTAINLY INDICATES THAT SOME SORT OF SEXUAL BATTERY OCCURRED. SO THERE WAS MORE THAN ENOUGH EVIDENCE, CIRCUMSTANCE OR -- CIRCUMSTANTIAL OR OTHERWISE, TO SEND THIS QUESTION TO THE JURY. UNLESS THE COURT HAS ANY OTHER QUESTIONS, WE WILL RELY ON OUR BRIEF AND ASK THE COURT AFFIRM THE CONVICTION AND SENTENCE IMPOSED AGAINST MR. WILLIAMS. THANK YOU.

LET ME ASK YOU THE REVERSE OF THE QUESTION THAT I ASKED YOUR OPPONENT. IF WE DID -- IF WE DO A HARMLESS ERROR ANALYSIS, IN THIS, TELL ME WHAT THE HARM IS, OTHER THAN I UNDERSTAND YOUR ARGUMENT THAT THE STATUTES SAY YOU HAVE GOT 12 JURORS, BUT --

WELL, THE POTENTIAL HARMS ARE ONE, THAT THE ALTERNATE HAD ALREADY FORMED SOME SORT OF DECISION BEFORE JOINING THE JURY AND, SHE WAS NOT ASKED ABOUT THAT, TO TAKE CARE OF THAT. THAT PROCEDURAL THING WAS NOT DONE. NOR WAS SHE ADMONISHED ABOUT THAT, WHEN SHE WAS RELEASED OR EXCUSED.

BUT IS THAT POTENTIAL FOR HER ANY GREATER THAN THE POTENTIAL FOR ANY OF THE OTHER JURORS, AFTER HAVING SAT THROUGH THE TRIAL?

WELL, IT IS -- IT IS GREATER, AS SHOWN BY THE MAGILL CASE, AND THAT IS WHY THIS THING, YOU KNOW WHEN YOU ARE EXCUSED, THERE IS A NATURAL TENDENCIES TO, REALLY, START THINKING ABOUT IT, AS OPPOSED TO EVERYDAY, WHEN YOU ARE IN TRIAL, BEING TOLD THINGS, YOU KNOW, NOT TO REACH ANY DECISIONS ABOUT THE CASE YET. BUT WHEN YOU ARE EXCUSED, I THINK THERE IS MORE AFTER NATURAL TENDENCY TO DO THAT, AND THAT IS WHY THE COURT'S -- THE COURTS EMPHASIZE THIS PROBLEM AND THE SAFEGUARD OF INTERVIEWING THE ALTERNATE BEFORE SHE JOINS THE JURY DELIBERATIONS. AND THIS, AGAIN, IN THIS CASE, SHE WASN'T GIVEN ANY ADMONISHMENT ON THIS AT ALL. AND SOME OF THE OTHER DANGERS THAT WOULD MAKE IT HARMFUL THAT WERE REALLY WORRIED ABOUT, ARE WHETHER THE OTHER ELEVEN JURORS HAVE DISREGARDED THEIR PRIOR DELIBERATIONS. BECAUSE IF THEY STILL HAVE THAT IN THEIR MIND THAT, CAN IMPACT THE WAY THINGS GO. AND THERE WAS NO INSTRUCTION FOR THEM TO DISREGARD THEIR PRIOR DELIBERATIONS. IN FACT, THERE WAS AN INDICATION I THINK JUSTICE LEWIS POINTED OUT, THERE WAS A -- THE JUDGE SAID THAT THE ALTERNATE MAY BE ABLE TO CHANGE YOUR MIND ABOUT CERTAIN VIEWS. NOW, THAT COULD BE THE COLLECTIVE MIND THAT THEY REACHED IN THOSE -- IT WAS BETWEEN FOUR AND-A-HALF AND FIVE HOURS THAT THEY WERE BACK THERE. AND THERE IS, ALSO, DANGERS JUST -- I KNOW IT HAS BEEN SAID BY THE STATE THAT, YOU KNOW, THE EXCUSED JUROR DIDN'T PARTICIPATE IN DELIBERATIONS AT ALL. SHE WAS JUST CRYING FOR THOSE FOUR AND-A-HALF TO FIVE HOURS.

IN THE FEDERAL SYSTEM, WOULD THIS HAVE BEEN REVERSIBLE? AS MS. CAMPBELL SAYS, IT IS AUTHORIZED TO HAVE SUBSTITUTION DURING DELIBERATIONS, PROVIDED THERE ARE SOME INSTRUCTIONS. WOULD THIS SATISFY THE FEDERAL STANDARD AND RULES, THE WAY IT WAS DONE IN THIS CASE?

LAST TIME I KNEW, THEY WERE STILL DOING -- THEY WOULD DO A HARMLESS ERROR ANALYSIS ON THAT, THE FEDERAL COURTS.

BUT -- WELL, THE HARMLESS ERROR, AGAIN, BECAUSE THEY ARE NOT INQUIRING AS TO THE JURORS. AS I AM UNDERSTANDING THAT THOSE TESTS, THE STATES THAT DO IT, WANT TO MAKE SURE THAT THERE ARE SUFFICIENT PROCEDURAL SAFEGUARDS TO ENSURE THAT, SO WOULD THIS FIT INTO WHAT THE FEDERAL SYSTEM WOULD FIND TO BE SUFFICIENT PROCEDURAL SAFEGUARDS?

WOULD THIS CASE? I DON'T -- I DON'T KNOW. BECAUSE YOUR FEDERAL COURTS DO DIFFERENT THINGS WITH THIS.

THAT IS WHAT I AM ASKING. IF THIS WAS A FEDERAL CASE, WOULD THIS BE AN AFFIRMANCE?

I DON'T KNOW. YOU DON'T KNOW FOR SURE. I WILL TELL YOU ONE THING ABOUT FEDERAL COURTS THAT I FOUND OUT, THROUGH MY RESEARCH, AND THEN I MISSED IT ORIGINALLY, BUT IT IS IN COMMON WEALTH VERSUS SANDERS, WHICH IS IN THE BRIEFS, AND THEY SAY THE FEDERAL COURTS HAVE A TENDENCYORS THIS ISSUE, TO PLACE THE BURDEN ON THE HARMLESS ERROR TEST, ON THE DEFENDANT, THE VICTIM OF THE ERROR.

ISN'T THAT CONSTITUTIONAL BASIS FOR THIS, IF IT CAN BE --

THERE IS NO FEDERAL CONSTITUTION, YOU DON'T HAVE A RIGHT TO A JURY OF TWELVE, AND I HAVE NEVER SAID THAT. FEDERAL COURTS ARE DIFFERENT THAT WAY. ALL THE STATE COURTS, THERE ARE MENTIONS AFTER STATE CONSTITUTIONAL RIGHT TO A JURY OF TWELVE. JONES, IN FLORIDA, RECOGNIZES THAT RIGHT, THROUGH-DO TALK ABOUT ART HE WILL -- THROUGH -- THEY DO TALK ABOUT ARTICLE I SECTION 2, AND IT IS EXPLAINED IN MY BRIEF, AT PAGES 18 AND 19, THAT THERE IS A CONSTITUTIONAL RIGHT TO A JURY OF TWELVE, EVEN IN STATES WHERE YOU JUST HAVE A RULE.

ARTICLE I SECTION 2?

ARTICLE I SECTION 22. I AM SORRY.

BUT THE RIGHT OF TRIAL BY JURY SHALL BE SECURE AND ALL REMAIN IN VIOLATE, THE NUMBER OF QUALIFICATIONS OF THE JURY BE SET AT TWELVE, AFFIXED BY LAW SHALL.

WHEN THAT IS INTERPRETED BY ME, AFFIXED BY LAW, THAT IS A RIGHT TO A JURY OF TWELVE IN A CAPITAL CASE. EVEN IN STATES THAT DON'T HAVE A CONSTITUTIONAL RIGHT TO A JURY OF TWELVE, THEY STILL DO, A LOT OF THEM DO THIS HARMLESS ERROR ANALYSIS.

WHAT FACTORS DO THEY TAKE INTO CONSIDERATION, IN A HARMLESS-ERROR ANALYSIS?

THEY -- WHETHER THE ALTERNATE WAS INQUIRED OF, TO MAKE SURE THEY HAVEN'T FORMED AN OPINION, TO MAKE SURE THEY HAVEN'T BEEN EXPOSED TO MEAD YEAH. WHETHER THE ELEVEN JURORS CAN DISREGARD THEIR PRIOR DELIBERATIONS AND WHETHER THEY ARE CAPABLE OF DOING SO. THEY WANT TO MAKE --

ACTUALLY ASKED THE OTHER JURORS, YOU ASKED THEM IF THEY CAN DO. THAT YOU DON'T JUST INSTRUCT THEM?

ARE YOU CAPABLE OF DISREGARDING YOUR PRIOR DELIBERATIONS? YES. THAT IS WHAT THEY ARE ASKED.

BUT THIS, ALL, FOLLOWS A DETERMINATION THAT THE INDIVIDUAL IS NOT LEAVING BECAUSE OF SOMETHING TO DO WITH THE CASE? THAT IS THE THRESHOLD, CORRECT? IF THERE IS A BASIS THAT THE JUROR HAS BEEN THE IMPETUS FOR THE REQUEST FOR LEAVE, STEMS FROM THE PROCEEDINGS OR THE CASE ITSELF. YOU DON'T EVEN GO TO THE NEXT STEP, DO YOU, IN THE FEDERAL SYSTEM? BECAUSE THEN IT IS, AS JUSTICE ANSTEAD SAID, YOU CAN FORCE ONE PERSON OFF AND THEN DO A HARMLESS ERROR ANALYSIS AND BRING SOMEBODY ELSE ON.

THE HARMLESS-ERROR ANALYSIS THAT I HAVE SEEN DONE BY THE STATES, THE STATES THAT ALLOW IT I DON'T KNOW IF THEY MAKE THAT DISTINCTION OR NOT. I AM NOT SURE. TO BE HONEST WITH YOU.

WE HAVE TO HAVE A THRESHOLD DETERMINATION THAT THE REASON FOR LEAVING HAS

SOMETHING UNCONNECTED WITH THE CASE. THAT IS THE THRESHOLD. CORRECT? BECAUSE IF IT DOES, IF IT HAS SOMETHING TO DO WITH THE CASE, DOES IT NOT, EVEN IN THOSE STATES THAT ENGAGE IN A HARMLESS-ERROR ANALYSIS, WOULD SAY THAT IS INAPPROPRIATE?

I THINK ALL JURISDICTIONS WOULD SAY THAT IS INAPPROPRIATE. ONE OF THE SAFEGUARDS, THE SAFEGUARD THAT WAS GIVEN IN THIS CASE WAS TO TELL THE JURY TO BEGIN DELIBERATIONS ANEW OR START DELIBERATIONS ANEW, BUT IF YOU LOOK AT THAT, CASES LIKE BURNETT AND PLATE, SAY THAT IS NOT ENOUGH BY ITSELF, AND I THINK WHAT THEY ARE REFERRING TO IS A SITUATION WHERE THE JURORS GO BACK AND THEY MIGHT START WITH THE FIRST PIECE OF EVIDENCE AGAIN, LIKE THEY DID BEFORE, BUT IF THEY DON'T DISREGARD WHAT WAS SAID ABOUT IT BEFORE, YOU STILL HAVE THE EVILS THAT ARE PRESENT HERE. AND ONE OF THE INDICATORS THAT COURTS LOOK AT VERY STRONGLY, IN SAY SEEING IF THERE IS CONTAMINATION OR HARM IN THIS ISSUE, IS HOW LONG THE INITIAL JURY DELIBERATED, IN CONTRAST TO THE RECONSTITUTED JURY, FAN THE RECONSTITUTED JURY IS DELIBERATING FOR A SHORTER PERIOD OF TIME, THEY WILL TEND TO SAY YOU HAVE THE PROBLEMS OF THE PRIOR JURORS NOT DISREGARDING PRIOR DELIBERATIONS DELIBERATIONS. ALSO HAVE POTENTIAL THAT THE JURY DIDN'T FOLLOW THE INSTRUCTIONS AND BEGIN DELIBERATIONS ANEW, ESPECIALLY WHERE THERE IS A DISCREPANCY. IN THIS CASE THE ORIGINAL JURY WAS OUT ALMOST BETWEEN FOUR AND-A-HALF AND FIVE HOURS, AND THE RECONSTITUTED JURY WAS LESS THAN TWO AND-A-HALF HOURS. THERE IS A BIG DIFFERENCE THERE, AND I DON'T THINK, UNDER ANY STANDARD, THIS COULD BE DECLARED HARMLESS. AND I WOULD NOTE THAT IT HAS BEEN REPRESENTED THAT THE EXCUSED JUROR WAS JUST CRYING THE TOTAL TIME THAT SHE WAS ON THE JURY, AND I DON'T THINK, IN THE CONTEXT OF HER TESTIMONY THAT, IS TRUE, ESPECIALLY FOR ALMOST FIVE HOURS. I THINK SHE DID HAVE PROBLEMS, BUT PROBABLY AT FIRST, FOR A LONG TIME, SHE WASN'T CRYING, AND THAT IS NOT DELINEATED, AND WE JUST DON'T HAVE EVIDENCE TO MAKE SURE THAT THAT HARM DIDN'T OCCUR, THAT HER VOICE WAS NOT IN THE JURY IN THIS CASE.

WHAT IS THIS STATE OF THE RECORD, INDICATING WHAT WENT ON DURING THOSE FOUR AND-A-HALF HOURS? WAS THERE LUNCH AND ALL OF THAT, AS THE STATE HAS SUGGESTED?

I DON'T REMEMBER IF LUNCH WAS CALLED IN OR IF THEY WENT OUT FOR LUNCH. I DON'T REMEMBER A RECESS FOR LUNCH. I AM NOT SURE THAT OR THE LENGTH OF THAT. THERE WAS A VERY BRIEF CALL FOR SOME EVIDENCE, BUT OTHERWISE IT WAS PRETTY MUCH UNINTERRUPTED, EXCEPT FOR THE POSSIBILITY OF THOSE TWO THINGS.

THE RECORD ACCURATELY REFLECTS THAT, THAT IS THERE ARE NOTATIONS APPROPRIATELY IN THE RECORD, SO WE CAN DETERMINE ACCURATELY.

OFF THE TOP OF MY HEAD, I DON'T KNOW. I MIGHT HAVE WRITTEN THAT UP. AND I SEE I HAVE RUN OUT OF MY TIME, AND I THANK THIS COURT.

THANK. THANKS TO BOTH OF YOU. WE WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.